

SPACES AS PLACES TOWNHALL MINUTES: TUESDAY, JUNE 14TH, 2022

Chris Larson: I'm Chris Larson with the Development Services Department. We're the department that does the permitting for construction within the city and we also have code enforcement within our group as well. I'm just going to go through a brief presentation about spaces, places so that you understand it and can decide for yourself that you want to participate in the program. These are just the topics I'm going to be speaking about. I want to remind you that we started all this outdoor dining as a response to COVID. There were requirements where your businesses weren't allowed to be fully occupied. Your businesses had to have 6 foot of separation. Now that a lot of those requirements have ended the city ordinance is expired. It's expiring July 13th and there's no way, based on the way we adopted the ordinance, to extend the emergency ordinance any further. So come July 13th, all businesses have been using the right of way and outdoor areas in an unusual ways that we allowed during the pandemic need to make changes to their operations and contain additional permitting in compliance with new requirements that have been adopted. So, as you recall, the ordinance allowed for expand expanded sidewalk cafes additional pedestrian plazas using the street parking lanes. There were the street closures, and then there were the use of private parking lots for dining. Under the new requirements, the city is requiring a right of way permit for what we're calling street eateries, sometimes called parklets. The use of this street parking lane for eating and drinking purposes. We are also requiring an encroachment agreement and that's an encroachment agreement very similar if you have that TOBO that you agree to have certain levels of insurance and you agree to maintain it and remove it if necessary. The one thing I do want to make sure you're aware of that's different for the street eateries moving forward under spaces as places, that's different from the temporary allowances we allowed business owners to be the person who signs the agreement. And the ordinance allowed for a special exception. to do that. We are now requiring that the property owner assign that agreement, and that's based on ownership and underlying fee and a lot of details I could explain if someone wants to get into it later. But sidewalk cafes that are just on the sidewalk have always had the requirement that the property owner signed the agreement. There's also outdoor dining on private property. A building permits required to do outdoor dining. An area on private property and that building permit is done to make sure that there's proper eateries from a site that the fences and walls aren't stopping eateries and that proper accessibility is provided as well. Another option is what's called an active sidewalk. An active sidewalk is pushing the sidewalk itself into the street parking lane instead of building a deck or platform, the sidewalk can be extended into that parking lane. We have had in the Gaslamp interest from the Hard Rock Hotel to do that for. I guess all four corners that they occupy, cause they're basically the entire block, but this picture kind of shows what it might look like. It's more of a sidewalk cafe appearance to it. The other option promenade, which at some point I know if the avenue is going to become at some point just an option to close streets down were part of the program as well, but I know that's more of a group effort and most of you will be more focused on doing the street trees which are the decks and platforms in the street parking lane. We've created a design manual to help you with your design. There's an information bulletin that's been published that is available on our website that gives details about the spaces, places, program and then we also have a checklist which has got you know approximately 100 different items for you to go through and to help you decide whether your location is good for it. If your platform that you may have already constructed

can be modified to comply with new requirements or to help you design the construction of a new one, this checklist is really important. This is our web page. It's on sandiego.gov/development-services. You could scroll down and there's an icon for spaces, but it gets you to this website. Where we provide information about the program. It's broken down and who can apply. Eating drinking establishments, or what this program is for during the temporary. During COVID we allow retail even to be outside Commercial Services gems. This program is just for eating during establishments, moving forward. We've got a section on planning your project which gives all this the submittal requirements that you need to provide. The location where you apply for the permit because we do all permitting now and development services online. One thing, I do want to mention when I'm talking about planning for the permit, you are required to have an architect, or an engineer take responsibility for your design and then the permit needs to be issued to a contractor would be responsible for the construction. I'm kind of going to repeat some of the things I've said before, but these are the major changes for street trees. There's additional insurance requirements. There's this encroachment agreement. There are design requirements, there are fees that are different, and then it's only for eating drinking establishments. Insurance requirements for commercial general liability insurance, \$1,000,000 per occurrence and \$2,000,000 aggregate. And the city is also must also be additionally insured. The encroachment agreement I want to say it again that the property owner must sign that agreement and the agreement gets recorded against the title of the property and this is very similar to how sidewalk cafes are permitted already in cyber cafes or the seating area on the sidewalk with the railing. There are location criteria for street eateries that we didn't concern ourselves with a temporary outdoor business. There's requirement to be separated from 55 feet from poles and equipment. Manhole's utility boxes. I do want to mention that the city is trying to be as flexible as we can be with the five feet of separation. It's probably more important for a manhole than it is for a street sign, cause in emergency there's no emergency that a street sign needs to be changed, but there might be an emergency to do some work in a manhole. There's requirements about how close these can be to intersections, and one thing that we did during the temporary. Outdoors, we allowed bike lanes to be modified. I don't think they're in the Gaslamp Quarter, but some locations on 6th Ave. Modify the location of the bike lane to allow for their temporary outdoor business. The bike lanes are going to take precedence or must be reconstructed and will be required to be allowed and so some locations if a bike lane is in front of the business that I will not be allowed to use the bike lane for the straight array. As I mentioned earlier, an architecture engineer must design it. A contractor must construct it, and a major thing that is important is no roof structures are allowed. These are just supposed to be platforms with a railing you are allowed to have posts for lighting to be above. However, there's no allowance for electrical wiring to cross the sidewalk. So solar lighting would need to be used. And their requirements for accessible access to the platforms. We didn't really concern ourselves with that during the temporary outdoor permitting, but now there needs to be an accessible access to a platform every 10 feet. There are fees, whereas many of you may have done the temporary outdoor operations without paying any fees. The city is collecting fees for the permitting of street eateries. You will pay a plan check fee that pays for city staff to review your plans. You will also pay an inspection fee to have the city inspect the platform to make sure it was installed per plan. There's also a development impact fee and that development impact fee is 115th of the fee that a building would pay. There's also a per square foot fee for the for the street or E that is 30 dollars, \$20, or \$10 per square foot, depending on location. There is a map that is accessible on the website that based on climate equity, what fee certain locations would have to pay. I'll say generally the \$20 fee is what I found to be on the map for the downtown area. E permits are valid for two years, and then there would be a need to renew the permit every two years and once again it's only for eating and drinking establishments. I do want to share about certain things that are ongoing.

Right now, we are accepting applications for these right of way permits for stories. We only have about 20 applications in so far that we've processed. We're hoping for many more citywide. We are requiring though a traffic control permit be obtained. If you've decided that you don't want to do the street or replacement, you want to abandon your temporary outdoor business. A traffic control permit is being required so the city can go out and inspect to make sure the area was not damaged during your outdoor operations code enforcement is ongoing on locations right now that have roofs or electrical, and these were issues that were of importance to the city fire Marshall. And that's why we're actively doing code enforcement on those issues. And then we are asking temporary outdoor businesses to relocate. If a capital improvement project or repaving a water line, any type of projects going through there is a need to relocate. In May, we sent out a letter to what we think are all business operate operations that are out there. We sent a list of 500 that we came up that applied for the permit and the letter basically get gave notice that within 45 days you need to remove your outdoor business or convert to the permanent Spaces as places program through that permit process. We are sending a second letter this week. Basically, is a 30-day notice allowing telling businesses that you need to abandon your temporary outdoor operations and convert to spaces as places. After July 13th, code enforcement may begin on those locations that haven't applied for spaces as places permit. We have decided as a department that if an application has been made for the spaces, places permit the temporary outdoor business operation can remain in place until such time as the basis places permit can be issued.

We ask that they those applicants that choose this route and don't get permitted before July 13th or moving forward quickly, diligently good faith effort to obtain that permit until such time as we can either issue the permit or we come to conclusion that the locational criteria doesn't work for the new location. The plan is to allow your outdoor operation to remain in place, even if it's after July 13th, which is the ending of the temporary allowances. If you're moving forward with an application for the new permit type. I'm happy to answer questions, talk about.

Michael Trimble: We're going to open it up for questions. I see Joe Santos.

Joe Santos: Curious how you want to approach this? We've gone into trying to fill out the paperwork get everything done with our management. We have a location there on 5th and market and we have a list of questions. Would you prefer I e-mail you to the gentleman speaking here or I could shoot you with a few other questions right now.

Michael Trimble: Hey Joe, want you to throw out some questions because it might help people that are probably in your same boat.

Joe Santos: So, we must make drawings of this deal and I heard you speaking of it when I joined. I'm curious as to are we doing the expanded version of when the street is closed. In the drawings, both versions and the shorter version is what we're we'll have to go with moving forward.

Chris Larson: So, spaces as places and the platforms are supposed to be for just the street parking lane.

Any area beyond that would not be a part of this program and you would not be able to do that until a permanent solution to close 5th Ave is brought forward and done. And I'm not aware of any permanent solution that would close. I'm being talked about that would close 5th Ave to traffic 24 hours a day, seven days a week because there's a need to have delivery foe hotels.

Joe Santos: There's a time it opens and closes beyond those signs.

Chris Larson: If the permanent structure would be the platform would just be within the street parking lane. If you, as a part of the special event now do more than you could continue to do that, depending on how it's permitted to be done after July 13th through whatever that process is, and we don't as a city, not specifically how to stretch the gap between July 13th when the special event ends and when the city will be installing bollards probably closer to winter. I mentioned to Michael when I got on, I had a meeting with about 20 of my colleagues just before this where we talked about different options about how to keep the street closure going after July 13th and everyone is actively working towards finding a solution. The problem is there's a lot of state laws that make it difficult to just close a street.

Even if it's for temporary purposes, COVID gave us a lot more flexibility because of a state of emergency. But from a city standpoint, that ordinance is ending July 13th.

Michael Trimble: Yeah, we we'll, we'll keep you posted on the closure.

Joe Santos: All right, so in summary, we'll submit the plans. We'll just keep the two things separate. I have a general contractor I kind of looked at all this. He's wondering, I am wondering we might all be if the construction inspection as it is if I'm building a restaurant where there's phases to it, we'll go that way. So, being we must rebuild from scratch or are you coming to inspect a finished product? Therefore, we could modify what we have now to match your plans.

Chris Larson: I have multiple answers for the multiple scenarios you kind of spoke about in in a perfect world, the city inspector does a pre-construction inspection at the site before any work has been done to talk about, you know location of where you're doing the work, how it's going to occur make sure that there aren't any utilities or other items in the right of way that weren't identified. The plans that may impact your ability to construct that is the preferred method. I do want to acknowledge that probably won't be how it it functions for lots of these existing setups. So, if you have an existing setup that needs to be modified, it would be probably best to get the permit have that initial inspection, this is what we're doing. This is what we're modifying and then you do the work. We are not having building We're having our resident engineers who are engineers who usually deal with civil work. They're going to be inspecting the work, so that's why we're requiring there to be an engineer or architect who designs.

Joe Santos: I'll jump into my next thing then on the stormwater requirements, very confusing.

Chris Larson: This I just want to give some background on why that's so complicated because I agree it's complicated. The city is a permittee to the state water Quality Control Board and the state Water Quality Control Board monitors the city to make sure that pollution is not occurring, and we have certain reporting. We must do to them. There's certain reports that need to be provided for construction projects. So yes, it is complicated, and I understand why you would have difficulty. I'd like you to e-mail me your specific questions and we'll include Michael on that, and I will have one of our stormwater engineers answer those specific questions, and then Michael can pass it along to you and everyone.

Joe Santos: That's perfect.

Chris Larson: The platforms need to span the sidewalk and leave the gutter open, so it's kind of functions as a bridge over the gutter. That's one of the main things the inspectors will be checking for when they come to look at the decks.

Joe Santos: Excellent, thank you.

Chris Larson: I'm happy to answer questions, respond to emails and I'll have a somewhat stormwater engineer investigate your specific questions about how to fill out the form. I do want to say though about I do recognize that restaurant owners you know you know the menu, you know how to cook. You know how to serve, but there are design professionals. That are responsible for this type of work. And it's appropriate to hire them to do the design and to do the installation and modifications if you need to change an existing platform.

Joe Santos

Michael Trimble: I see Daniel hand up.

Michael Trimble

Daniel: Ok Chris, I appreciate your time. Quick question. You said the property owner in connection with your own property. Are you allowed to extend into another person's property that they're not using with their permission?

Chris Larson: Yes, you can build one of these street or E platforms in front of neighboring properties with that property owners' permission, but that property owners' permission is the same as the property owner that the restaurant would be on. It's the same agreement that would need to be signed.

Daniel: Ok, that's a simple answer then thank you.

Chris Larson: But yeah, but I do want to also mention that there are requirements about how long or large street eateries can be the fire department was concerned about emergency responses so. In the scenario of going in front of a neighboring property, you probably will need to have two platforms. There's requirement that every 20 feet there's a 5-foot brake, so that would be like how it functions for a car. Fire engine can stop and can get between the cars to the to the sidewalk they would need to get between the street.

Michael Trimble: Thanks, Daniel, Chris, Chris, Eddie.

Eddie: Yes, thank you. Hi Chris, good to see you. Even if it's by zoom, a couple, one minor point, and that is, I assume that in addition to signing it must be notarized because it's going to be a recorded document, right?

Chris Larson: Yes, these encroachments remove agreements are recorded against the title of the property and so you know it it's a on the title that if its properties sold agreement still there, the owners still agreed to it.

Eddie: I understand. When does one of these have to be removed? Let's say that the business goes out of business and it's not operating there anymore. Does it have to be removed or can it stay?

Chris Larson: Well, I would hope a new business would come in and utilize it.

Eddie: Well, certainly as a landlord we always hope that. So, can these be built speculatively? If it's an association, if it's associated with a restaurant that is available to lease, can a landlord property owner go through the process of having one of these permitted and built?

Chris Larson: Yeah, I don't. I don't see why. If that's included as part of the lease, or how that works. I don't know the legal nature of that, but I don't see any problem with it being done. The things to remember is that these are two year permits and need to be renewed every two years and the purposes for the renewal is to make sure that it is being properly maintained. It hasn't been damaged and it's you know, being properly used and it is potential that the city changes their desire for how a street should be utilized and there may be a need to change things like you know long term plan I assume at some point.

Chris Larson

Howard: Can I ask a quick question about this, Michael?

Michael Trimble: Yeah, go ahead Howard.

Howard: First, yeah, I'm confused. The landlord, MRA is only a portion of the application, right? So, if there's no tenant to apply for the spaces as places. How does the landlord apply for? For this MRA I mean I can't just get an MRA because I'd like an MRA on the entire length of my building if there's not an associated restaurants, right? Or cause, it's really the tenant applying for the spaces as places.

Chris Larson: We don't require the tenant to be the applicants.

Howard: So, the landlord would be the applicant for the whole spaces as places.

Chris Larson: Yes, that could occur.

Howard: So, I think I asked this question of a few weeks ago. If I have a multi-tenant building with a 200-foot frontage and multiple tenants and I wanted to control the entire frontage. I could apply for the MRA, but the tenant still would be applying individually for the spaces as places to build within that I'm applying for one whole.

Chris Larson: You would if in that scenario you would apply for the permit for the structures and have the structures constructed.

Howard: So, then I would have to apply for the structure. I get more involved in just the MRA.

I'm now involved in doing.

Chris Larson: If that's how you want to apply for it, I think there's multiple options.

Howard: Ok.

Howard

OK cause otherwise.

Eddie: Well and you can charge rent, right? If you built it.

Howard: Well, theoretically I guess that's the case.

Chris Larson: I don't know if you can do that. So, about that specific issue, if you know if you think that's something that is legal and you can do that, just keep in mind the fees the city's charging as well. The city is charged in a per square foot fee and a development

impact fee that might not make it be something that a business will want to invest in if they also have the additional need to you know, pay elsewhere, so let's keep that in mind. It's all economics, I would say. Right and one more thing about the you know, if you own a large store, multiple storefronts and you want to do this. Just keep in mind what I mentioned earlier. You couldn't build one platform that stretches across the whole distance you would be building multiple platforms so that it kind of has the same function.

Chris Larson

Howard: I just wanted to get a master MRA for the full length and then let the tenants apply for their individual permits to build structures within that area.

Chris Larson: Yeah, we would be the MRA is for the structures.

Howard

Michael Trimble: Chris, if an establishment received a code compliance letter or a notice to you know, comply from the existing structure, would that preclude them from applying for the spaces as places per?

Chris Larson: No, no, the remedy is the spaces places permit because that brings the project into compliance moving on.

Michael Trimble: Any other questions for Chris while we got in here? Bill Keller, I see your hand up.

Bill: Yes, I had a question after the structures are permitted and begin operating and people begin to sort of violate. Yeah, I'm wondering what the process is. Is it, uh, reporting through get it done? Is the code enforcement aspect of this? Are those going to be designated folks who work only on spaces as places issue, or are they going to be folks that are handling a variety of things when we know code enforcements overwhelmed?

Chris Larson: Code enforcement of street eateries are not being prioritized. So, it would be treated like, I mean we're not assigning certain staff to do it. We're not going to proactively do it. It would be completely complaint based. You could do it through, get it done. Here is also on our development service webpage. There's an area for you to file a complaint as well. That's how it will be occurring.

Bill: Now, the fees that are paid are specifically designated first for enforcement and then to be used for enhancements in the neighborhood. So, I'm very surprised by that answer because that you know I think in the Gaslamp where we've had a, uh, a planned district ordinance. A lot of people just ignore that, and we haven't gotten a lot of support from the city from code enforcement. We haven't got a lot of upfront support. It seems to me from DSD on approving businesses to operate within the planned District ordinance. So, I, I'm quite surprised by that response aren't the fees. I mean that specified in what the City Council passed that the fees would be used for enforcement. So, I have a colleague of mine Sameera, who's also at this meeting. She was involved in bringing forward the ordinance and the regulations to City Council for approval, and I'm dealing with the implementation. And other requirements. Some errors from the planning department. Did you hear the question? They're asking about the designation of the fees we're collecting. Is there certain purposes those fees are supposed to be used at and used for in a priority of those fees?

Sameera: Yeah, I can speak to that. So, the fees collected would first go towards implementation of the program. So, as Bill mentioned enforcement and you know all the program expenditures would be first card, first, prioritized, and then anything after that would then be spent in communities of concern and then after that like at least 50% in communities. Of concern and the remaining towards citywide public improvements. So

whatever Bill mentioned is correct, and that is how it has been adopted as per the resolution. If we're walking down the street and we see people that are just as has often happened, just blowing off the rules and regulations, totally ignoring them.

Chris Larson: I will let my colleagues and code enforcement know your concern and your request to do that. You know one of the other things that's come up is we aren't necessarily going to begin code enforcement day one on all the temporary businesses that don't make applications for this new replacement permit you know thought as that's complaint based as well, you know. So that's just the typical way code enforcement operations need to file a complaint and they sign a code enforcement officer. You know, I know we have plans to have you know people assigned to the vacation, new Vacation Rental Ordinance people assigned to the new vending rules that take that take place.

Michael Trimble: I see a question.

Brian: Thanks for being here Chris. It was really good information to hear. My question must do more from the land use and planning side. I'm one of the members on the board here. Question is, this is a historic district? We do have a PDO. We do have guidelines. What is the process the city is doing to review these such that they conform and work within the historic district itself? Is there a historic resource board staff review? Who of this and what is the process that the city is going through in terms of the permitting?

Chris Larson: I'm sorry I don't know the answer to the historic review.

Brian: Is it even part of the process?

Chris Larson: Well, I agree that it should be. I think I need to verify that it is.

Brian: I would say greatly appreciated.

Catalina: So, when, according to the design guidelines, uh, a lot of what's happening with the street eateries or with the parklets. I'd hate to see happen with the street. A reason we're talking about.

Hanging vines and the hanging heaters and TV's and all the things that are not in compliance. When they do, the initial evaluation, will those things not be allowed? They will be able to put up a platform with a regulation railing. That goes along with the PDO.

Chris Larson: I'll answer the same way. I don't know the answer of how we're doing historic review and reviewing for compliance with the design guidelines of the planned District ordinance. I don't know that I will investigate that and let Michael know so he can pass that along to the membership.

I do want to say again though, that there are allowances for lighting to be on posts which would be higher than the railing under the.

Michael Trimble: Is there any other questions for Chris? And if you don't want to ask your question now, please feel free to e-mail me the question or questions and I'll send them to Chris, and we'll work to get those answered for you. Thank you, Chris. Thanks Samira. I really appreciate everyone spending some time with us to get clarification on spaces as places. Again, I will be happy to collect any questions to funnel them to Chris so we can get answers quickly. If you need any assistance, please feel free to reach out to me.

Chris Larson: Alright, thank you, I appreciate.

Michael Trimble: Thanks, thanks everybody.

Ken: Quick question. I understand people's concerns about how the outside decks look have has the Gaslamp Association looked at doing anything like Little Italy where they just hire an engineer firm that can just does all the plans for us and then we can just execute what the architects have put together so that we have that consistency.

Michael Trimble: That's something we can investigate. Absolutely, I can bring that up at our next executive meeting and see what we can do and see how that might work, but that's a great suggestion.

Marsha: Great idea.

Michael Trimble: All right, ok, we're adjourned at 5:07pm. Thank you all for attending, I look forward to hearing from everyone soon.